

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
AT&T Inc. and BellSouth Corporation)	WC Docket No. 06-74
Applications for Approval of)	
Transfer of Control)	
)	

COMMENTS OF THE GEORGIA PUBLIC SERVICE COMMISSION

I. Introduction

Comes now, the Georgia Public Service Commission (“GPSC”), by and through its counsel, the Attorney General for the State of Georgia, and files these comments in the above-styled proceeding in response to the October 13, 2006 Public Notice issued by the Federal Communications Commission (“Commission”) seeking comment on proposals submitted by AT&T Inc. (“AT&T”) and BellSouth Corporation (“BellSouth”) (collectively “the Applicants”). On June 5, 2006, the GPSC filed comments urging that the Commission require, as conditions of any approval of the Applications for Transfer of Control, that network neutrality be maintained and that AT&T offer stand-alone digital subscriber line (“DSL”) service in BellSouth’s service territory as AT&T currently offers in other states. (See Attachment 1). The GPSC continues to urge the Commission to impose these conditions on any approval of the Applications for Transfer of Control.

In addition, the Public Notice attached a supplemental filing from the Applicants setting forth proposed merger conditions. The GPSC will address some of

those proposed merger conditions as well in this filing. Further, BellSouth's customers should receive, at a minimum, the same protections that were afforded to the customers in the context of the Southwestern Bell Telecommunications, Inc.'s ("Southwestern Bell's") acquisition of AT&T.

II. Merger Conditions

The GPSC is generally supportive of many of the potential merger conditions contained in the October 13, 2006 letter from AT&T to the Commission, but will focus its comments on a number of the proposed conditions that were discussed in written and oral comments in the Georgia proceeding¹ on the Applicants' merger. While the GPSC did not impose these conditions pursuant to its limited jurisdiction over mergers, the parties' comments demonstrated that the imposition of these conditions has the potential for benefiting competition.

A. Standalone DSL

As the GPSC discussed in its previous comments, any approval of the Applications for Transfer of Control should be conditioned upon the requirement that AT&T offer standalone DSL in BellSouth's service territory. Currently, BellSouth does not offer its DSL service on a stand-alone basis. In fact, in order to receive BellSouth's DSL service, a customer must purchase BellSouth's voice service as well. The anticompetitive impact of this policy is exacerbated in an environment where major competitors merge and customers have fewer competitive options.

¹ Docket No. 22682-U

In addition, the Commission should specify that the standalone DSL must be offered at reasonable and nondiscriminatory rates. The benefit to consumers of standalone DSL will be negated if the rates offered for the service are exorbitant. As a practical matter, if the rates are exorbitant, the service will not be available to consumers on a standalone basis and consumers will essentially still be required to purchase BellSouth's voice service in order to receive its DSL service.

Including this requirement as a condition of approving the application is reasonable as demonstrated by the fact that AT&T already offers stand-alone DSL in Southwestern Bell's territory. Stand-alone DSL service is obviously technically feasible. Moreover, the GPSC is not requesting that the Commission set a cost-based rate for the service. If the acquisition is approved with this condition, then AT&T would have the opportunity to earn a profit from providing stand-alone DSL service to customers that wish to choose that option. The GPSC is only asking that the Commission require that the rates for this service be reasonable and nondiscriminatory.

Without this condition, consumers will be deprived of a competitive option for which they may not be able to find an alternative. Such consumers will be forced to purchase a service they may not need or want in order to receive the desired service. In reviewing the Applications, the Commission must consider the relationship between this policy and diminishing competitive options for consumers. In the interests of consumers and fair competition, it is reasonable to impose the modest and technically feasible condition that stand-alone DSL service provided at

reasonable and nondiscriminatory rates be required as a condition of approving the acquisition.

Finally, on the issue of standalone DSL, the GPSC urges the Commission to adopt the “ADSL Transmission Service” condition included in AT&T’s October 13, 2006 letter. The provisioning of wholesale standalone DSL should benefit competition and ultimately end-user consumers.

B. Rate Freeze on UNEs

The Applicants include as a potential condition of the merger that they will not seek any increase in State-approved rates for unbundled network elements (UNEs) or collocation that are in effect as of the Merger Closing Date. (October 13, 2006 AT&T Letter, p. 3). In the Georgia proceeding on the merger, the CLEC Coalition² proposed applying price caps to UNEs stating that such a measure would “avoid protracted litigation over cost studies.” (Initial Brief of the CLEC Coalition, p. 24, July 20, 2006, GPSC Docket No. 22682-U).

One practical effect of mergers between incumbent local exchange carriers and their largest competitors is that the smaller competitors end up having to bear more of the burden to present the opposition to an incumbent’s pricing case before state utility commissions. Proceedings to determine the appropriate costs for UNEs impose substantial costs on the parties.

Obviously, these costs weigh heavier on the smaller competitive carriers. A rate freeze may benefit these carriers by helping them avoid litigation costs for the near future. The GPSC supports this condition of the merger.

C. Audits of EELs Eligibility

The Applicants include as a potential merger condition that they would terminate all pending audits of compliance with the Commission’s enhanced extended links (EELs) eligibility criteria and shall not initiate any new audits. In

² In the Georgia proceeding, the CLEC Coalition consisted of Cbeyond Communications, LLC, DeltaCom, Inc., Momentum Business Solutions, Inc., NuVox Communications, Inc., XO Communications Services, Inc. and Xspedius Communications, LLC.

the Georgia proceeding, the CLEC Coalition advocated conditioning approval of the merger upon the requirement that BellSouth “terminate all efforts to audit the abandoned safe-harbor provisions and simply move forward with the architectural safeguards adopted in the [*Triennial Review Order*].” (Initial Brief of the CLEC Coalition, p. 33, July 20, 2006, GPSC Docket No. 22682-U). As noted above, the GPSC did not impose this condition pursuant to its limited jurisdiction over mergers. However, the written and oral comments demonstrated that this condition was reasonable and narrowly-tailored to benefit competition.

Therefore, the GPSC urges the Commission to impose a condition on the merger that requires the Applicants to terminate all pending audits of compliance with the Commission’s EELs eligibility criteria and to prohibit the Applicants from initiating any new audits. In order to eliminate any potential disputes regarding this condition, the Commission should clarify that the term “pending audits” applies to all audits that have been commenced as well as audits for which a notice has been served but no further auditing activity has begun.

III. Sunset for Conditions

The Applicants state that their potential merger conditions would automatically sunset as of thirty months from the Merger Closing Date. (October 13, 2006 AT&T Letter, p. 2). The Commission should not adopt this proposed sunset. The purpose for any of these conditions is to protect consumers and competition in the face of the anticompetitive effects that may result from a substantial merger. There is no advantage to committing to strip consumers of the

protections offered by the proposed conditions as of a date certain when it cannot be known how long those conditions may be necessary and useful.

The more prudent course would be to set a date on which to review whether the conditions imposed upon the merger should remain in effect. Such a provision offers the Applicants the opportunity to show that whatever developments may have taken place in the interim warrant discontinuing certain conditions. It also ensures that conditions that are still necessary will not be discontinued based on an arbitrary deadline set without the benefit of knowing what will transpire going forward. The experience that the Commission will gain over the next thirty months (or whatever alternative time period the Commission may ultimately decide upon) will place it in a better position to judge the wisdom of continuing these conditions than it is in today without that experience. There is no reason for the Commission to tie its hands now from taking the necessary actions to protect consumers and competition in the future. The Commission may wish to specify that in its review of the conditions it will consider any factors it deems appropriate, including the conduct of the Applicants and their competitors during the interim, in determining whether to continue particular conditions.

IV. Conclusion

The GPSC reaffirms its support for conditioning any approval of the applied for Transfer of Control on the maintenance of network neutrality and the offering by the Applicants of stand-alone digital subscriber line service in BellSouth's service territory. The GPSC supplements its comments on standalone DSL to request that

the condition specify that the service must be offered at reasonable and nondiscriminatory rates. Subject to its comments set forth herein, the GPSC generally supports many of the merger conditions included in the October 13, 2006 letter from AT&T to the Commission.

Respectfully submitted,

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